

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of

Wireless Telecommunications Bureau Seeks	)	
Comment on Spectrum Needs for the	)	WT Docket No. 11-79
Implementation of the Positive Train Control	)	DA 11-838
Provisions of the Rail Safety Improvement Act	)	
of 2008	)	

To: Chief, Wireless Telecommunications Bureau

**Reply Comments of  
Kingdon R. Hughes**

The Wireless Telecommunications Bureau, by Public Notice dated May 5, 2011, requested comments on use of spectrum in the 220 MHz frequency range for use by Positive Train Control (“PTC”) systems. Radio services potentially affected include the Automated Maritime Telecommunications System (“AMTS”) at 217 – 220 MHz, the Interactive Video and Data Services (“IVDS”) at 218 – 219 MHz (now called the 218 - 219 MHz Service), and the 220 MHz Radio Service at 220 – 222 MHz. I, Kingdon R. Hughes, hold IVDS license KIVD008 in market area IVM004 (Philadelphia, PA) in the frequency range 218.5 – 219 MHz. As such, I have a direct interest in this proceeding.

Hughes certainly has no objection to the railroads seeking to acquire new spectrum for PTC. In fact, Hughes has helped facilitate the acquisition of spectrum by the railroads in the past and has offered to do so again, this time in the Philadelphia, PA MSA. In many markets,

including Philadelphia, there are licensees in the above-mentioned radio services that would be willing to listen to offers to lease, partition, disaggregate or sell their spectrum. In the 218-219 MHz Service alone, most of the major markets in the Northeast Corridor are currently available, or can become available soon, for use by the railroads. The New York, Philadelphia and Washington, D.C. markets are available and the Boston and Baltimore markets are simply waiting to be reaucted.

Last year at this time, Amtrak released a request for proposals (RFP) for commercial licensees in the 217-222 MHz band to help satisfy Amtrak's PTC spectrum needs in the Northeast Corridor. Hughes responded to Amtrak's RFP where he proposed that his IVDS license for the Philadelphia MSA could be acquired. Hughes believes that many other licensees also responded with similar proposals in their respective markets. To date, almost a year later, Amtrak has made no official announcement concerning the results of its RFP to all of the participants, each of whom spent considerable time and resources submitting detailed bid proposals. Rather, in its comments to this proceeding, Amtrak states on page four that much of the spectrum is, "licensed to other entities who have not shown any willingness to enter into reasonable secondary market transactions with the rail industry." This is a blatantly false statement. Amtrak never even made a counter offer to Hughes' proposal.

While Amtrak never responded to Hughes' bid proposal, Hughes also believes that Amtrak did not respond to any other proposals submitted by licensees in the IVDS band. Given that Amtrak states in its Reply Comments on page six, footnote 12, that "500 kHz of additional spectrum dedicated to PTC should be sufficient to initially satisfy the PTC spectrum needs of passenger carriers in most suburban and urban areas" Hughes does not understand why Amtrak

did not attempt to negotiate for spectrum with any IVDS licensees. Each IVDS license contains precisely 500 kHz.

It has become clear through Amtrak's own comments that they would prefer to buy AMTS channels. In fact, Amtrak stated that they received a viable offer to purchase partitioned portions of MCLM, Inc.'s AMTS licenses in the Northeast Corridor, but that MCLM is subject to a hearing as to its qualifications to hold those licenses. Amtrak also stated in the same footnote that it "also investigated the acquisition of spectrum from PTC-220, either by way of purchase or even lease for a relatively short period of time, but these efforts have proven unsuccessful." Amtrak made the conclusion in the same footnote that, "its ability to secure spectrum pursuant to its RFP is in doubt." As far as Hughes knows, Amtrak made no effort to negotiate for IVDS spectrum in the secondary market and therefore cannot say that its ability to secure spectrum for PTC is in doubt. Apparently, Amtrak is willing to purchase AMTS spectrum from MCLM and 220 MHz spectrum from PTC-220 but is not interested in purchasing IVDS spectrum. Hughes is puzzled as to why Amtrak did not comment on its ability to acquire IVDS spectrum. Oddly enough, it asks the FCC to reallocate this part of the spectrum even though it never made an offer to buy it.

Moreover, it seems that all of the railroads that filed comments support being given spectrum for nothing. CSX Transportation, Inc. states on page 2 of its Reply Comments that it "anticipates that inadequate spectrum availability may impact our PTC implementation in the following areas:". Both Philadelphia and New York/Newark are mentioned on its list of such markets. Hughes believes it is important for the Commission to know that he has never been contacted by CSX, and for that matter, by any other major freight railroad to inquire about the availability of his license in Philadelphia. So for the railroads to say there is no available

spectrum in certain dense metropolitan markets is simply not true. Furthermore, Hughes would like to point out that he previously held a nationwide 220 MHz license that was acquired by the railroads, thus demonstrating his willingness to enter into good faith negotiations and complete an agreement with the railroads.

It appears that Amtrak and perhaps the entire railroad industry would rather have the FCC reallocate the spectrum for PTC use, thus eliminating the need for negotiations with incumbent licensees and any requirements to pay for spectrum. Let's be clear on one point, while Amtrak claims the spectrum is for public safety, railroads are by no means public safety entities. Railroads are for-profit companies that should not be given spectrum in the same manner as true public safety entities. The Commission's decision to allocate 24 MHz of spectrum at 700 MHz for public safety use, at no cost, was entirely appropriate. The users of that spectrum are and will be publicly funded first responders that truly protect life and property on a daily basis. Railroads certainly cannot make that claim and should be required to purchase or lease spectrum from incumbent licensees in areas where such licenses exist. There is absolutely no reason for the railroad industry to receive spectrum for free when other profit-making entities have had to buy spectrum at auction or in secondary markets.

This is not the first time that the railroad industry has attempted to grab spectrum for free. In the mid-90s, the railroads were given six channels in the 900 MHz band for Advanced Train Control ("ATC"), a precursor to the PTC system now being proposed. It is not documented that the railroads ever used that allocation effectively. What is known is that once the railroads obtained the channels (for free), the channels were lost to everyone else. The railroads also have great control over their channels in the VHF and UHF bands. Unlike most business/industrial/land transportation channels that are openly shared by any eligible user, the



railroads have the exclusive right of frequency coordination for channels designated as primarily railroad. Those channels are highly protected by the railroad frequency coordinator, making it difficult for sharing by other B/ILT eligible entities. More recently, the railroad industry attempted to convince the Commission to simply license the Association of American Railroads on all of the channels designated as primary railroad. This would have effectively prevented any further sharing of “their” spectrum. The current proposal is just another twist in a series of attempts by for-profit companies to obtain free spectrum. The Commission must not be misled by their claim of the spectrum being used for “public safety.” It may be in the public interest to have a PTC system in the country, but it surely does not qualify as a Public Safety service.

Amtrak suggests on page seven of its comments that the Commission should reallocate the 218-219 MHz band for PTC use and suggests that incumbent licensees will either not be affected at all or can easily be moved to another portion of the band. Such a suggestion is outrageous. Any reallocation of the band will most certainly have effects on incumbent licensees. Even if incumbents could be moved to some other portion of the 217-220 MHz band, there are costs associated with such changes to equipment. It also is unclear that spectrum moves would even be possible. For example, if IVDS licensees were moved to 217-218 MHz, AMTS licensees would be affected negatively. There is no “green field” spectrum for such moves. If spectrum moves were determined to be possible, Amtrak makes no offering of how incumbent licensees would be compensated for the equipment changes that would be required.

Hughes does support the granting of rule waivers that would help facilitate the implementation of PTC in all of the bands from 217-222 MHz. However, granting such waivers on a piecemeal basis, and only in certain bands at a time, is not only inefficient but creates unnecessary roadblocks for the timely rollout of services within this spectrum band. Hughes

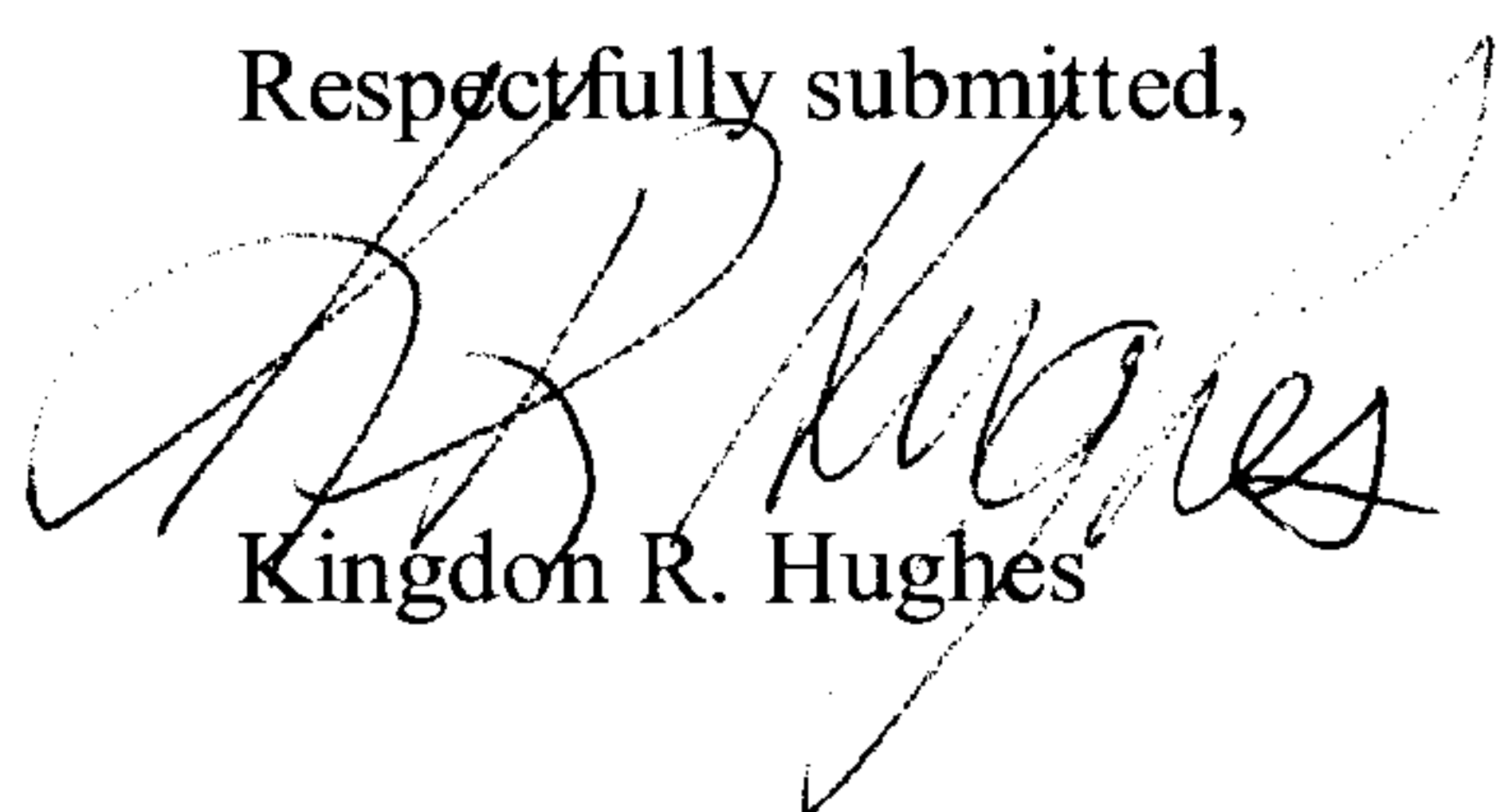
submitted detailed comments last year in response to the Commission's NPRM in which he applauded the FCC for its efforts to streamline the technical rules governing these bands.

### **Conclusion**

While Hughes is quite willing to help facilitate the implementation of PTC in the 217-222 MHz band, he strongly disagrees with the railroad industry's comments that licensees are not willing to enter into reasonable market transactions and that there is not enough spectrum available for their use. In the IVDS band alone (218-219 MHz Service) there is one megahertz of spectrum available either by purchase/lease or reauction along the entire Northeast Corridor as well as the rest of the country. What makes the railroads request for free spectrum so egregious is the fact that neither Amtrak nor any Class-1 Railroad has ever made an offer to purchase or lease Hughes' Philadelphia IVDS license, nor any other major market IVDS license that Hughes knows of. The rail industry simply cannot say their ability to secure 218-219 MHz spectrum is in doubt when they have not made any offers to purchase this part of the spectrum.

By asking the Commission to reallocate spectrum to for-profit enterprises, the railroads are simply attempting to bypass negotiations with incumbent licensees. The Class-1 Railroads are all for-profit, multibillion-dollar corporations; they are not public safety agencies charged with protecting the general public. This request for free spectrum by the rail industry is just another attempt in a series of spectrum grabs by the railroads. Let us not forget that the railroad companies, just like all other for-profit businesses, can and should pay for the spectrum they require.

Respectfully submitted,



Kingdon R. Hughes